

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 98-5268 (DMC)

NCH CORPORATION, NATIONAL  
CHEMSEARCH CORPORATION OF NEW  
JERSEY, INC., AMERICAN ALLSAFE  
CO., INC. d/b/a CERTIFIED  
LABORATORIES OF NEW JERSEY,  
INC., MOHAWK LABORATORIES OF  
NEW JERSEY, INC., or as a  
DIVISION OF NCH CORPORATION, FMC  
CORPORATION and LISBETH HIGGINS,

Defendants.

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 01-0476 (JCL)

FMC CORPORATION, and  
LISBETH HIGGINS,

Defendants.

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**CONSENT DECREE**

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## I. HIGGINS FARM SUPERFUND SITE BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), in 1998 filed a complaint, civil action number 98-5268 (DMC) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended. In May 1999, the United States filed an amended complaint.

B. The United States in its amended complaint, naming NCH Corporation, FMC Corporation ("Settling Defendant") and Lisbeth Higgins as defendants, seeks: (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Higgins Farm Superfund Site ("Higgins Farm"), in Franklin Township, Somerset County, New Jersey, together with accrued interest pursuant to Section 107 of CERCLA, 42 U.S.C. §9607; and (2) a declaration of liability for future response costs.

C. In accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"), and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on May 28, 2004, of negotiations with potentially responsible parties regarding the takeover of the operation and maintenance and any other future response work and payment of response costs at the Higgins Farm Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration ("NOAA") of the Department of Commerce on May 24, 2004, and the United States Department of Interior Fish and Wildlife Service ("FWS") on May 25, 2004, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

E. The defendant that has entered into this Consent Decree does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Higgins Farm complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Higgins Farm Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in March, 1989.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Higgins Farm Site, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the permanent groundwater remedy at the Higgins Farm Site pursuant to 40 C.F.R. Part 300.430 from 1990 until 1992.

H. On September 24, 1990, EPA issued a Record of Decision ("1990 ROD"). The 1990 ROD provided, as an interim remedy, the installation of an alternate water supply for certain residences near the Higgins Farm Site. By May 1993, the alternate water supply had been installed.

I. On September 30, 1992, EPA issued a second Record of Decision for Higgins Farm ("1992 ROD") that documents EPA's selection of a permanent remedial action for Higgins Farm. The remedial action selected in the 1992 ROD provided for the design and construction of an on-site extraction and treatment system for contaminated groundwater, with discharge of the treated groundwater to an on-site surface water body.

J. The design and construction of the treatment plant occurred between February 1993 and May 1998. The treatment plant at Higgins Farm commenced operations in May, 1998 and continues to operate.

## II. HIGGINS DISPOSAL SUPERFUND SITE BACKGROUND

K. On or about January 30, 2001, FMC Corporation filed a complaint seeking reimbursement for response actions it undertook at the Higgins Disposal Superfund Site ("Higgins Disposal"). FMC's lawsuit is civil action number 01-0476 (JCL).

L. The United States, on behalf of the EPA, in June 2001 filed a complaint pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as amended, naming FMC and Lisbeth Higgins as defendants and seeking (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at Higgins Disposal, in Kingston, Somerset County, New Jersey, together with accrued interest; and (2) a declaration of liability for future response costs. That lawsuit is civil action number 01-2946 (KSH).

M. During a scheduling conference on or about July 16, 2001, the Court consolidated civil action numbers 01-0476 (JCL) and 01-2946 (KSH). The controlling civil action number is 01-0476 (JCL).

N. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey on May 28, 2004, of negotiations with potentially responsible parties regarding the payment of past response costs at the Higgins Disposal Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

O. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified NOAA on May 24, 2004, and FWS on May 25, 2004, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

P. The defendant that has entered into this Consent Decree does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Higgins Disposal complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

Q. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed Higgins Disposal on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in August, 1990.

R. In response to a release or a substantial threat of a release of hazardous substances at or from Higgins Disposal, EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") for Higgins Disposal pursuant to 40 C.F.R. §300.430 from 1992 through 1996.

S. On September 30, 1997, EPA issued a Record of Decision ("1997 ROD") that documents EPA's selection of a remedial action for Higgins Disposal. The remedial action selected in the 1997 ROD has two components. The first component involves the installation of an alternative water supply for the residents affected by the contaminated groundwater. The second component involves the construction of an on-site groundwater extraction system and pipeline to transmit the contaminated groundwater to the Higgins Farm Superfund Site for treatment. By September 1999, the alternate water supply had been installed.

T. On December 9, 2002, EPA issued an Explanation of Significant Differences ("2002 ESD") for Higgins Disposal. Pursuant to the 2002 ESD, the second component of the remedial action selected in the 1997 ROD has been changed to the installation of an on-site groundwater extraction and reinjection system.

U. In a Partial Consent Decree entered by the court on September 16, 2004, Settling Defendant agreed to design, construct and operate the on-site groundwater extraction and reinjection system for the Higgins Disposal Superfund Site as set forth in the 2002 ESD.

V. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of Higgins Farm and Higgins Disposal, will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

### III. JURISDICTION

1. This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has

personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

#### IV. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

#### V. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, *et seq.*

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XVI). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 39.

“Explanation of Significant Differences” or “ESD” shall mean the EPA Explanation of Significant Differences relating to the Higgins Disposal Site signed on December

9, 2002, by the Regional Administrator, EPA Region 2, or her delegate, and all attachments thereto. The ESD is attached as Appendix A.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code 26 U.S.C. § 9507.

“Future Response Costs for Higgins Farm” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will pay for response actions at Higgins Farm after the Effective Date.

“Future Response Costs for Higgins Disposal” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will incur for response actions at Higgins Disposal after the Effective Date.

“Interim Response Costs for Higgins Disposal” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Higgins Disposal Site between June 1, 2004 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

“NCH Groundwater Investigation” shall mean any investigation to be conducted by NCH Corporation or any other Party to determine if groundwater contamination has migrated beyond the Higgins Farm property borders.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Partial Consent Decree” shall mean the Partial Consent Decree entered by the Court on September 16, 2004, in which Settling Defendant agreed to design, construct and operate the on-site groundwater extraction and reinjection system as set forth in the 2002 ESD for the Higgins Disposal Superfund Site.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs for Higgins Farm" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Higgins Farm Site through the Effective Date.

"Past Response Costs for Higgins Disposal" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Higgins Disposal Site through May 31, 2004, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Plaintiff" shall mean the United States of America and the Environmental Protection Agency.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Remedial Action for the Higgins Farm Superfund Site" shall mean the remedial action selected by EPA for the Higgins Farm Superfund Site in the September 30, 1992 Record of Decision.

"Remedial Action for the Higgins Disposal Superfund Site" shall mean the remedial action selected by EPA for the Higgins Disposal Superfund Site in the September 30, 1997 ROD and the 2002 ESD.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean FMC Corporation, which has its principal place of business at 1735 Market Street, Philadelphia, Pennsylvania 19103;

"Sites" shall mean the Higgins Farm Superfund Site, located on Route 518 in Franklin Township, Somerset County, New Jersey, and generally shown on the map attached as Appendix B; the Higgins Disposal Superfund Site, located on Laurel Avenue, Kingston, Somerset County, New Jersey, and generally shown on the map attached as Appendix C; and all real property onto which or under which hazardous substances have migrated from these properties. The Higgins Farm Superfund Site is hereinafter referred to as "Higgins Farm." The Higgins Disposal Superfund Site is hereinafter referred to as "Higgins Disposal."

"State" shall mean the State of New Jersey.

"United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA and any



federal natural resource trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(33), 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 9603(27); and (4) any “hazardous material” under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10, et seq.

## VI. REIMBURSEMENT OF RESPONSE COSTS

### 4. Payments by Settling Defendant for Response Costs at Both Sites

a. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$14,500,000, plus Interest from June 1, 2004 to the date of payment, in payment for response costs at the Higgins Farm Site. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1998-V-02168, EPA Site/Spill ID Number 02-W9, and DOJ Case number 90-11-3-1486/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$2,000,000, plus Interest from June 1, 2004 to the date of payment, in payment for Past Response Costs at the Higgins Disposal Site. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001-V-00202, EPA Site/Spill ID Number 02-3C, and DOJ Case number 90-11-3-1486/2. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

c. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to EPA \$225,000.00 in satisfaction of its obligation to pay Interim Response Costs for the Higgins Disposal Site. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001-V-00202, EPA Site/Spill ID Number 02-3C, and DOJ Case number 90-11-3-1486/2. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

d. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XIV (Notices and Submissions).

5. Of the \$16,500,000.00, plus Interest, to be paid to the United States by Settling Defendant pursuant to Subparagraphs 4.a and b above, \$16,000,000.00, plus Interest, shall be deposited in the EPA Hazardous Substance Superfund, and \$500,000.00, plus Interest, shall be deposited in the Higgins Disposal Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Higgins Disposal Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## VII. FAILURE TO COMPLY WITH CONSENT DECREE

6. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4.a, b and c of Section VI (Reimbursement of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

### 7. Stipulated Penalty

a. If Settling Defendant fails to make the payments when due, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA as a stipulated penalty, in addition to the Interest due, the following amounts per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$2,500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$5,000	31 <sup>st</sup> day and beyond

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of a penalty by EPA. All payments to the United States under this Section shall be identified as "stipulated penalties" and shall be remitted via Electronic Fund Transfer ("EFT"), along with the following information, to EPA's Account with Mellon Bank, Pittsburgh, Pennsylvania:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank Routing Number: **043000261**
- v. Name of Party making payment
- vi. DOJ case Number: **90-11-3-1486/1** (Higgins Farm) and **90-11-3-1486/2**

- (Higgins Disposal)
- vii. Site Spill Identifier Nos. **02-W9** (Higgins Farm) and **02-3C** (Higgins Disposal)

c. At the time of the EFT, a letter shall be sent by Settling Defendant indicating that the payment is for stipulated penalties, and shall reference EPA Region 2, the Site/Spill ID Numbers 02-W9 (Higgins Farm) and 02-3C (Higgins Disposal), the DOJ Case Numbers 90-11-3-1486/1 (Higgins Farm) and 90-11-3-1486/2 (Higgins Disposal), and the name and address of the party making the payment. The letter shall be sent to the United States as provided in Section XIV (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region 2, 290 Broadway, 29<sup>th</sup> Floor, New York, NY 10007-1866.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under this Section shall be in addition to any other remedies or actions available to the United States by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

10. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### VIII. COVENANTS NOT TO SUE BY PLAINTIFF

11. a. For Higgins Farm Site. In consideration of the payment that will be made by the Settling Defendant pursuant to Paragraph 4.a of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a) with regard to the Higgins Farm Site. With respect to past and future liability, these covenants not to sue shall take effect for the Settling Defendant upon the receipt by EPA of the payment required by Paragraph 4.a of Section VI (Reimbursement of Response Costs). These covenants not to sue Settling Defendant

with regard to the Higgins Farm Site are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant for the Higgins Farm Site and do not extend to any other person.

b. Settling Defendant shall not be responsible for the NCH Groundwater Investigation, response costs or response actions EPA determines are necessary as a result of such investigation, except the United States reserves its rights to pursue Settling Defendant for any response costs or response actions to address sources of groundwater contamination or sources of soil contamination which were not known information or known conditions as identified in Paragraph 15.

12. For Higgins Disposal Site. In consideration of the payments that will be made by the Settling Defendant pursuant to Paragraph 4.b and c of this Consent Decree, and except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant for Past Response Costs and Interim Response Costs at the Higgins Disposal Site pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a). These covenants not to sue shall take effect for the Settling Defendant upon the receipt by EPA of the payments required by Paragraph 4.b and c of Section VI (Reimbursement of Response Costs). These covenants not to sue Settling Defendant for Past Response Costs and Interim Response Costs at the Higgins Disposal Site are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant for the Higgins Disposal Site and do not extend to any other person.

#### IX. RESERVATION OF RIGHTS BY UNITED STATES

13. United States' Pre-certification Reservations.

a. As to the Higgins Farm Site. Notwithstanding any other provisions of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant,

1. to perform further response actions relating to Higgins Farm, or
2. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site:

- (i) conditions at Higgins Farm, previously unknown to EPA, are discovered, or

- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action for the Higgins Farm Superfund Site is not protective of human health or the environment.

b. As to the Higgins Disposal Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant,

- 1. to perform further response actions relating to Higgins Disposal, or
- 2. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site:

- (i) conditions at Higgins Disposal, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action for the Higgins Disposal Superfund Site is not protective of human health or the environment.

14. United States' Post-Certification Reservations

a. As to the Higgins Farm Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

- 1. to perform further response actions relating to Higgins Farm, or
- 2. to reimburse the United States for additional costs of response,

if, subsequent to Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site:

- (i) conditions at Higgins Farm, previously unknown to EPA,

- are discovered, or
  - (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action for the Higgins Farm Superfund Site is not protective of human health or the environment.

b. As to the Higgins Disposal Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

1. to perform further response actions relating to Higgins Disposal, or
2. to reimburse the United States for additional costs of response,

if, subsequent to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site:

- (i) conditions at Higgins Disposal, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action for the Higgins Disposal Superfund Site is not protective of human health or the environment.

15. For purposes of Paragraphs 13.a and 14.a, the information and the conditions known to EPA relating to the Higgins Farm Site shall include that information and those conditions known to EPA through the Effective Date, including, but not limited to, the information and conditions set forth in the October 2003 Higgins Farm Superfund Site Five-Year Review, the October 22, 1999 Remedial Action Report, the September 30, 1992 Record of Decision, the September 24, 1990 Record of Decision, and the May 2004 Remediation System Evaluation Report. For the purposes of Paragraph 13.b, the information and conditions known to EPA relating to the Higgins Disposal Superfund Site shall include only that information and those conditions known to EPA as of the date the ESD for the Higgins Disposal Site was signed and set forth in the ESD and the administrative record supporting the ESD.

16. For the purposes of Paragraph 14.a, the known information and known conditions relating to the Higgins Farm Site shall include the information and conditions as described in Paragraph 15 and that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action for the Higgins Farm Superfund Site. For

purposes of Paragraph 14.b, the information and conditions known to EPA relating to the Higgins Disposal Site shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site and set forth in the ESD, the administrative record supporting the ESD or in any information received by EPA prior to Certification of Completion of the Remedial Action for the Higgins Disposal Superfund Site.

17. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's Covenants Not to Sue in Paragraphs 11 and 12. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant including, but not limited to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release or threat of release of Waste Material outside of the Sites;
- c. liability for costs incurred or to be incurred by the United States at the Higgins Disposal Site that are not within the definitions of Past Response Costs for Higgins Disposal and Interim Response Costs for Higgins Disposal;
- d. liability for violations of federal and state law which occur during or after implementation of the Remedial Action.
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- f. criminal liability.

#### X. COVENANTS BY SETTLING DEFENDANT

18. Subject to the reservation in Paragraphs 19 and 20, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to either Site or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to either Site; or

c. any claims arising out of response actions at or in connection with either Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

19. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section IX (Reservation of Rights by United States), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

20. Settling Defendant further reserves, and this Consent Decree is without prejudice to, claims against the United States seeking to recover a portion of any claim or judgment against Settling Defendant, if and only if Settling Defendant's claims meet the following conditions:

a. the claim must be based upon the Department of Energy's involvement in the COED project at Settling Defendant's Princeton, New Jersey facility;

b. the claim must be for a portion of the Settling Defendant's liability (including potential liability) at one or both of the Sites; and

c. the claim or judgment must emerge from an action brought by the State of New Jersey relating to one or both of the Sites.

21. Settling Defendant further reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. §2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight of approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

22. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

23. Waiver of Claims Against Certain Parties for Higgins Farm Site:



Settling Defendant agrees not to assert any claims and to release or waive all claims or causes of action that it may have for all matters relating to the Higgins Farm Site, including for contribution, against Shell Chemical Company and Firmenich, Inc. under CERCLA. This waiver shall not apply with respect to any defense, claim, or cause of action Settling Defendant may have against Shell Corporation or Firmenich if they assert a claim or cause of action relating to the Higgins Farm Site against Settling Defendant.

#### XI. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

24. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 23 (Waiver of Claims Against Certain Parties), each of the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

25. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, or any other person with respect to the Sites. The "matters addressed" in this settlement do not include those response costs or response actions which are or may be the subject of Paragraph 13, Paragraph 14 and Paragraph 17 of this Consent Decree; those response costs or response actions at the Higgins Farm Site to address sources of groundwater contamination or sources of soil contamination which were not known information or known conditions as identified in Paragraph 15; or for claims for failure to comply with this Consent Decree.

26. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it, after the Effective Date, for matters related to this Consent Decree, it will notify in writing the United States within twenty (20) days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within twenty (20) days of receipt of any order from a court setting a case for trial.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs or other appropriate relief relating to one or both Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-

splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiff).

## XII. ACCESS TO INFORMATION

28. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Sites, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

### 29. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

### XIII. RETENTION OF RECORDS

31. Until ten years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person under CERCLA with respect to the Sites, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA and DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

33. Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sites and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

### XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3- 1486/1 and 90-11-3-1486/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

ATTN: Higgins Farm Remedial Project Manager  
U.S. Environmental Protection Agency-Region 2  
290 Broadway  
New York, New York 10007-1866

ATTN: Higgins Disposal Remedial Project Manager  
U.S. Environmental Protection Agency-Region 2  
290 Broadway  
New York, New York 10007-1866

ATTN: Higgins Farm and Higgins Disposal Superfund Site Attorney  
U.S. Environmental Protection Agency-Region 2  
Office of Regional Counsel  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866

As to Settling Defendant:

Robert T. Forbes  
Director, Environment  
FMC Corporation  
1735 Market Street  
Philadelphia, Pennsylvania 19103

John F. Stillmun  
Assistant General Counsel  
FMC Corporation  
1735 Market Street  
Philadelphia, Pennsylvania 19103

Kenneth H. Mack, Esq.  
FOX ROTHSCHILD, LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

36. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is the December 9, 2002 Explanation of Significant Differences for the Higgins Disposal Superfund Site;

“Appendix B” is a map of the Higgins Farm Superfund Site; and

“Appendix C” is a map of the Higgins Disposal Superfund Site.

#### XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XVIII. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

#### XIX. SIGNATORIES/SERVICE

40. The undersigned representatives for Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified them in writing that it no longer supports entry of the Consent Decree.

42. Settling Defendant hereby agrees not to oppose entry of the Consent Decree, or to challenge any of the provisions of the Consent Decree involving NCH Corporation.

43. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### XX. FINAL JUDGMENT

44. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement

embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

45. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
DENNIS M. CAVANAUGH  
United States District Judge

\_\_\_\_\_  
JOHN C. LIFLAND  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NCH Corporation, et al., Civil Action No. 98-5268 (DMC) and United States v. FMC Corporation and Lisbeth Higgins, Civil Action No. 01-0476 (JCL) relating to the Higgins Farm and Higgins Disposal Superfund Sites.

FOR THE UNITED STATES OF AMERICA

Date: August 9, 2006

SUE ELLEN WOOLDRIDGE /  
Assistant Attorney General  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

MYLES E. FLINT, II  
PATRICIA MCKENNA  
SCOTT BAUER  
KATHERINE KANE  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
(202) 307-1859

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

SUSAN STEELE  
Assistant United States Attorney  
District of New Jersey  
970 Broad Street, Suite 700  
Newark, New Jersey 07102

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FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/20/06

GEORGE PAVLOU  
Director  
Emergency and Remedial Response Division  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1866

DEBORAH SCHWENK  
Assistant Regional Counsel  
Region 2  
U.S. Environmental Protection Agency  
290 Broadway  
New York, New York 10007-1866



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. NCH Corporation, et al., Civil Action No. 98-5268 (DMC) and United States v. FMC Corporation and Lisbeth Higgins, Civil Action No. 01-0476 (JCL) relating to the Higgins Farm and Higgins Disposal Superfund Sites.

FOR FMC CORPORATION

Date:

6/24/06

ROBERT T. FORBES

Director, Environment

FMC Corporation

1735 Market Street

Philadelphia, Pennsylvania 19103

# Exhibit A

## EXPLANATION OF SIGNIFICANT DIFFERENCES

### HIGGINS DISPOSAL

#### Site Name and Location

Higgins Disposal

Town of Kingston, Franklin Township

Somerset County, New Jersey

#### INTRODUCTION

The United States Environmental Protection Agency (EPA) presents this Explanation of Significant Differences (ESD) to explain the modification made to the remedy selected in the September 30, 1997 Record of Decision (ROD) for the Higgins Disposal Superfund Site. This modification relates to that portion of the remedy which addresses the treatment of contaminated groundwater and is the result of new information obtained and developed subsequent to the 1997 ROD.

The remedy selected in the 1997 ROD called for contaminated groundwater to be extracted and conveyed via a pipeline to the existing treatment system at the nearby Higgins Farm Superfund Site for remediation to federal and state maximum contaminant levels (MCLs) and the promulgated New Jersey Groundwater Quality Standards Criteria (NJGQSC), the discharge of treated groundwater to surface water, and the implementation of a groundwater monitoring program. In addition, the ROD also required that the ten residences on Laurel Avenue and the Higgins family residence on the site be connected to a potable water supply line. Finally, the ROD stated that five-year reviews will be periodically performed to ensure that the remedy is protective of human health and the environment.

This remedy was based on information presented in the final August 1996 Remedial Investigation and Feasibility Study (RI/FS). However, following the completion of the on-site landfill removal activities and the extension of a potable water supply line to the ten residences of Laurel Avenue and the Higgins residence, EPA and one of the potentially responsible parties (PRPs) agreed to an additional investigation of the site prior to the start of design activities for the groundwater remedy. The purpose of this pre-design investigation (PDI) was to assess the impact of the removal activities on the site groundwater, verify the assumptions made in the RI/FS, and provide a better understanding of the groundwater conditions at the site. In February 2001, the

PRP submitted the PDI report to EPA which generated new information about the site that was not available during the preparation of the ROD. This new information has resulted in a decision to modify the groundwater remedy selected in the 1997 ROD.

EPA is issuing this ESD pursuant to Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended 42 U.S.C. §9617(c), and Section 300.435(c)(2)(i) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) 40 C.F.R. §300.435(c)(2)(i). The ESD and documents which form the basis for the decision to change the response action will be incorporated into the Administrative Record file for the site in accordance with Section 300.825(a)(2) of the NCP. The entire Administrative Record for the site is available for public review at the following locations:

Mary Jacobs Memorial Library -  
64 Washington Street -  
Rocky Hill, NJ 08553  
(609) 924-7073

Hours: 9:30 a.m. - 8:30 p.m. (Monday thru Thursday)  
9:30 a.m. - 5:30 p.m. (Friday)  
9:30 a.m. - 12:30 p.m. (Saturday)

Franklin Township Public Library  
485 De Mott Lane  
Somerset, NJ 08873  
(732) 873-8700

Hours: 10:00 a.m. - 9:00 p.m. (Monday - Thursday)  
10:00 a.m. - 5:00 p.m. (Friday and Saturday)  
1:00 p.m. - 4:00 p.m. (Sunday)

and

U.S. Environmental Protection Agency  
290 Broadway - 18<sup>th</sup> floor  
New York, NY 10007  
(212) 637-4308

Hours: 9:00 a.m. - 4:30 p.m. (Monday - Friday)

This change to the selected remedy is not considered by EPA or the New Jersey Department of Environmental Protection (NJDEP) to be a fundamental modification of the remedy selected in the ROD. The remedy modification will maintain the protectiveness of the

groundwater action with respect to human health and the environment, and complies with federal and state requirements that were identified in the ROD.

## **SITE BACKGROUND**

### ***Location and General Description***

The site, which consists of 37.6-acres, is located in a rural area on Laurel Avenue (Kingston-Rocky Hill Road) in Franklin Township, Somerset County, New Jersey. It is bounded by residential properties to the south, a commercial property (Trap Rock Industries' Quarry) to the north, and undeveloped farmland to the east-southeast. The Higgins Farm Superfund Site is located about 1.5 miles to the northeast. Within a three-mile radius of the site, approximately 10,000 people rely on groundwater as a source of drinking water.

A freshwater wetland is located 300 feet from the site as well as two on-site ponds that discharge into Dirty Brook, a tributary of the Delaware/Raritan Canal. Dirty Brook, located along the northern and southern property boundaries, is not used for irrigation or drinking water. The Delaware/Raritan Canal, located approximately three miles downstream from the site, is used for fishing, boating, and swimming. Both the Millstone River and Delaware/Raritan Canal, located approximately 1,500 feet west-southwest of the site, flow north and eventually discharge into the Raritan Bay.

### ***Site History***

From the 1950's through 1985, the Higgins Disposal Services, Inc. (HDS) operated a residential, commercial, industrial and construction waste disposal facility that included a waste transfer station and compactor, an underground storage tank, an area for container storage, and a non-permitted landfill on the eastern side of the property. The owner's family currently maintains a residence on the site, as well as an equestrian school (Hasty Acres Riding Club) and a truck repair shop.

In early 1982, NJDEP discovered that HDS was operating an unregistered waste transfer station and an active, non-permitted, landfill on the property. Following an inspection of the property in September 1982, NJDEP issued an Administrative Order to HDS in October 1982. The Order required HDS to cease all operations of the landfill and remove the solid waste from the property.

In August 1985, the owner of several residences on Laurel Avenue (Trap Rock Industries) contacted the Franklin Township Health Department (FTHD) and NJDEP because of medicinal tasting tap water. Subsequently, FTHD and NJDEP sampling of the residential wells on Laurel Avenue revealed the presence of various volatile organic compounds (VOCs). In December 1985, NJDEP began an investigation to determine the source of the contamination. Based on this investigation, NJDEP identified HDS as one of the potential source areas. All residences on Laurel Avenue who did not have access to the public water supply line were notified by NJDEP or FTHD to use bottled water and/or install a whole-house point source filter system.

In September 1986, NJDEP instituted an Interim Well Restriction Area (i.e., the State restricted the installation of new wells for potable use) for the Laurel Avenue area while negotiations continued between Franklin Township and a water supply company to extend a waterline to the residences of Laurel Avenue. These negotiations continued unsuccessfully until approximately 1993.

The site was proposed for inclusion on the National Priorities List (NPL) of Superfund Sites on June 24, 1988. It was added to the NPL on August 30, 1990. Subsequently, EPA conducted a Removal Assessment at the site. This assessment was necessary to determine if any emergency response actions were warranted prior to beginning an investigation of the site.

#### *Summary of Removal Actions*

In October 1990, as part of the Removal Assessment, EPA's Environmental Response Team (ERT) collected shallow soil and pond sediment samples from selected areas across the site which were accessible to customers of the Hasty Acres Riding Club. The results of this sampling indicated that polychlorinated biphenyls (PCBs) in the range of 1.2 to 47 parts per million (ppm) were present in the surface soils of the Beginners' Riding Ring. This contamination is believed to be the result of the movement of PCB-contaminated soil from the indoor riding ring after a fire inside the indoor riding ring had caused a lighting ballast containing PCBs to fall on the ground.

From October through November 1992, EPA undertook a removal action which restricted access to the Beginners' Riding Ring during the excavation and disposal of 765 tons of PCB-contaminated soil. The contaminated soil was shipped to a Toxic Substances Control Act permitted landfill in Grandview, Idaho. No other accessible surface locations on the property were found to pose an immediate health concern.

During the course of the RI field work in March 1993, an additional removal action was initiated upon the discovery of buried waste in a field on the property, south of the landfill. Initially, only drums were discovered in this area based on a geophysical survey conducted as part of the RI field activities. However, test trenching activities uncovered laboratory glassware and plastic containers. These test trenches confirmed the presence of hazardous substances in containers and soil at several locations on the site which were primarily near the surface and in areas of an active portion of the Hasty Acres Riding Club. Because this contamination posed a significant threat of potential exposure to the riders and horses, the Agency for Toxic Substances and Disease Registry (ATSDR) recommended the immediate placement of warning signs and to restrict access in this area. As part of a second removal action, a security fence was erected on May 27, 1993.

Following the installation of warning signs and a fence, another geophysical survey was conducted using different instrumentation to search for non-metallic buried waste as well as other buried waste not discovered during the first metallic survey. This survey was completed in the summer of 1993. After an analysis of the results, EPA began excavating areas of known and suspected buried waste in April 1994. Some areas were found to be clean, while others contained a great deal of buried waste, corroded and leaking containers as well as glass bottles and vials, some empty and some containing material.

From April through October 1994, approximately 3,200 containers and 850 tons of contaminated soil (other than the soil from the Beginners' Riding Ring) were excavated and transported off-site for disposal at permitted disposal facilities. In addition, to ensure that the geophysical surveys had identified all areas used for burying waste, additional test trenching was initiated in November 1994. Nine test trenches were excavated to a depth of approximately eight feet below grade. No waste materials were discovered in any of these test trenches.

However, during the excavation of one additional test trench along the vegetated fence line on the eastern side of the site, more buried waste (a 55-gallon drum, two 5-gallon plastic lab jugs, a 40- milliliter (ml) vial, and a bag of resinous white material) was uncovered. This buried waste was consistent with the type of waste found in other burial areas on the site. As a result of this newly-discovered waste material, additional test trenches were excavated to delineate the extent of the buried waste. From November 1994 to May 1996, additional buried waste was excavated as part of EPA's removal activities. By June 1996,

a total of approximately 7,000 containers and 12,000 tons of contaminated soil were excavated and transported off-site for disposal at permitted disposal facilities.

Post-excavation sampling in the summer of 1996 revealed the presence of waste containers near the previously defined edge of the landfill. From September to November 1996, EPA excavated and disposed of approximately 50 laboratory containers and 908 tons of contaminated soils from the southern face of the landfill.

As a result of the excavation of laboratory containers and contaminated soils from the southern face of the landfill, a comprehensive investigation of the landfill area was initiated in the fall of 1996. As part of this investigation, twelve shallow test trenches were excavated near the perimeter of the landfill in January 1997. The results of the excavation indicated that the landfill contained buried containers, drums, and other waste materials.

On March 11, 1998, EPA and the Potentially Responsible Party (PRP) entered into an Administrative Order on Consent (AOC) for the removal of the landfill area at the site. Between August 1998 and June 1999, approximately 34,000 tons of soil, debris and non-native materials and 16,000 containers were excavated and shipped off-site to a permitted disposal facility. After completing the removal activities in June 1999, a small volume of radioactive and mixed wastes remained on-site in a secure area while off-site disposal arrangements were being finalized. The radioactive and mixed waste were removed for off-site disposal in December 1999 and June 2000, respectively.

#### Summary of Remedial Actions

EPA initiated a Remedial Investigation (RI) in October 1992. The purpose of the RI was to determine the nature and extent of the contamination in the surface and subsurface soils, sediments, surface water and groundwater at the site. The RI results indicated that the majority of the contaminant concentrations and frequency of detection were found to be relatively low throughout the site. However, the highest concentration of VOCs were observed in the groundwater near the landfill. Subsequent to the completion of the RI, the landfill was found to contain significant amounts of hazardous substances mixed with solid waste.

As part of the RI, a baseline risk assessment was conducted to estimate the risks associated with the current and future site conditions. Based on the results of the RI, the risk assessment



concluded that the exposure to contaminated groundwater posed a potential threat to residents who currently utilize groundwater as their potable water supply or residents who will utilize groundwater in the future. The exposure to soils, surface water, and sediments did not pose a significant risk. Following the completion of the RI, an FS was prepared which identified various alternatives for addressing the groundwater contamination at the site. A final RI/FS report was issued in August 1996.

Based on the results from the final RI/FS report, a ROD was signed on September 30, 1997 which selected a groundwater remedy for the site. The major components of the selected remedy included the waterline extension and connection to the residences of Laurel Avenue and the Higgins' residence, the installation of on-site extraction wells, the construction of a pipeline to convey contaminated groundwater to the Higgins Farm Site for treatment and discharge to a surface water body, and the implementation of a monitoring program to ensure groundwater would achieve the federal and state MCLs and the promulgated NJGQSC.

On May 19, 1998, EPA issued a Unilateral Administrative Order (UAO) to the PRP for the extension and connection of a water supply line to the ten residential properties on Laurel Avenue and the Higgins' residence on the site. However, after the UAO had been issued, two additional service connections were included in this remedial action, one for a newly-constructed home on Laurel Avenue, and one for a single resident property that required two separate water meters. The waterline extension and connection to the thirteen residences was completed in April 1999, and a final Laurel Avenue Waterline Extension Remedial Action Report was approved by EPA on September 16, 1999.

From October 1999 to September 2000, an approved pre-design investigation (PDI) to further delineate the extent of groundwater contamination, was conducted by the PRP. A final PDI Report was submitted in February 2001. Subsequently, the PRP prepared and submitted a focused Feasibility Study (FFS), dated June 2001, which re-evaluated several response actions for addressing the site groundwater contamination.

#### **DESCRIPTION OF SIGNIFICANT DIFFERENCES AND THE BASIS FOR THOSE DIFFERENCES**

The difference between the remedy selected in the September 1997 ROD and the actions described in this ESD relate to the treatment and disposal of contaminated groundwater. The other components

of the selected remedy will remain the same.

The primary remedial objectives for the remedy selected in the September 1997 ROD were to capture and treat the groundwater contamination found at the site, and limit the future off-site migration of the contaminated groundwater.

Based on the FS, EPA selected Alternative 3B as the preferred remedial alternative for the groundwater remedy at the site. Alternative 3B includes the installation of on-site extraction wells, the construction of a pipeline for conveying extracted groundwater to the Higgins Farm waste water treatment plant (WWTP) for treatment, the discharge of treated groundwater to surface water, and the implementation of a monitoring program to ensure the effectiveness of the remedy.

As a result of the new information generated by the PDI, an FFS was prepared which re-evaluated two of the alternatives originally discussed in the FS. Alternative 3B (the ROD selected remedy) and Alternative 4B both meet the remedial objectives outlined for the site. Alternative 4B includes the installation of on-site extraction and reinjection wells, and the construction of a 10 gallons per minute (gpm) treatment plant. On-site reinjection of treated water had been rejected during the FS process. However, new data obtained from the PDI indicated that the overburden soils within the site were sufficiently deep (100 feet) and permeable for re-injection of treated water. This treated water could, therefore, be successfully reinjected into the overburden near the center of the site and be recaptured by the aquifer from which it originated. Furthermore, the PDI had also re-examined the installation of a pipeline to the Higgins Farm treatment plant (Alternative 3B) and determined that the pipeline route would present many more difficulties, which were not assessed during the FS, in obtaining permits, rights-of-way, and easements from off-site areas, including the crossing of Dirty Brook. In addition to the new information in the PDI, a natural attenuation study was conducted to determine whether groundwater conditions were suitable for biodegradation processes. The analytical results provided several lines of evidence that biodegradation for select VOCs may be occurring.

As part of the FFS, a comparative analysis was conducted of the remedial alternatives. The results of this analysis indicated that both Alternative 3B and Alternative 4B would provide compliance with the identified applicable or relevant and appropriate requirements (ARARs), achieve the overall protection of human health and the environment, and reduce the toxicity, mobility, and volume of the site-related contaminants. However, the analysis also indicated that the potential for off-site

discharge of contaminated groundwater from a pipeline failure associated with Alternative 3B could affect its long-term effectiveness compared to the on-site treatment of Alternative 4B. In addition, the implementation of Alternative 3B would provide administrative uncertainties because of the requirements necessary for installing a pipeline off-site, such as obtaining easements and land owner access agreements, compared to the on-site remedial activities for Alternative 4B. Finally, after the remedial design activities have been completed, Alternative 4B could be implemented within 6 months compared to 18 months for Alternative 3B.

For Alternative 4B, the capital costs are estimated to be \$729,350. Annual operation and maintenance is estimated to be \$390,000. The present worth cost is estimated to be \$2,700,000.

For Alternative 3B, the capital costs are estimated to be \$2,464,710. Annual operation and maintenance is estimated to be \$338,000. The present worth cost estimated to be \$4,300,000.

Based on an evaluation of the two alternatives, EPA recommends Alternative 4B, instead of Alternative 3B, as the preferred groundwater remedy for the site. Alternative 4B includes the installation of extraction wells, on-site treatment from a WWTP, and reinjection of treated water into the aquifer. The extracted water will be piped to an on-site WWTP which includes flocculation, clarification, filtration followed by two granular-activated carbon (GAC) vessels, and final pH adjustment. As part of this groundwater remedy, a Classification Exemption Area (CEA) would need to be implemented for the impacted groundwater at the site until the contaminant concentrations meet federal and state maximum contaminant levels (MCLs) and New Jersey Groundwater Quality Standards Criteria. Alternative 4B would require operation and maintenance which consists of performance monitoring of the system and groundwater to ensure achievement of remediation goals.

The preferred alternative (Alternative 4B) is expected to cost approximately \$1,600,000 less and provide the same level of protectiveness in significantly less time than the preferred remedy in the September 1997 ROD (Alternative 3B). In addition, the on-site treatment plant is more feasible to implement, and more cost-effective than the extension of an off-site pipeline.

#### SUPPORT AGENCY COMMENTS

NJDEP concurs with EPA on this modified remedy.

#### AFFIRMATION OF STATUTORY DETERMINATIONS

EPA and NJDEP believe that the modified remedy remains protective with respect to human health and the environment, complies with federal and state requirements that were identified in the ROD and this ESD as applicable or relevant and appropriate to this remedial action, and is cost effective. In addition, the remedy continues to utilize permanent solutions and alternative treatment technologies to the maximum extent practicable for this site.

#### PUBLIC PARTICIPATION

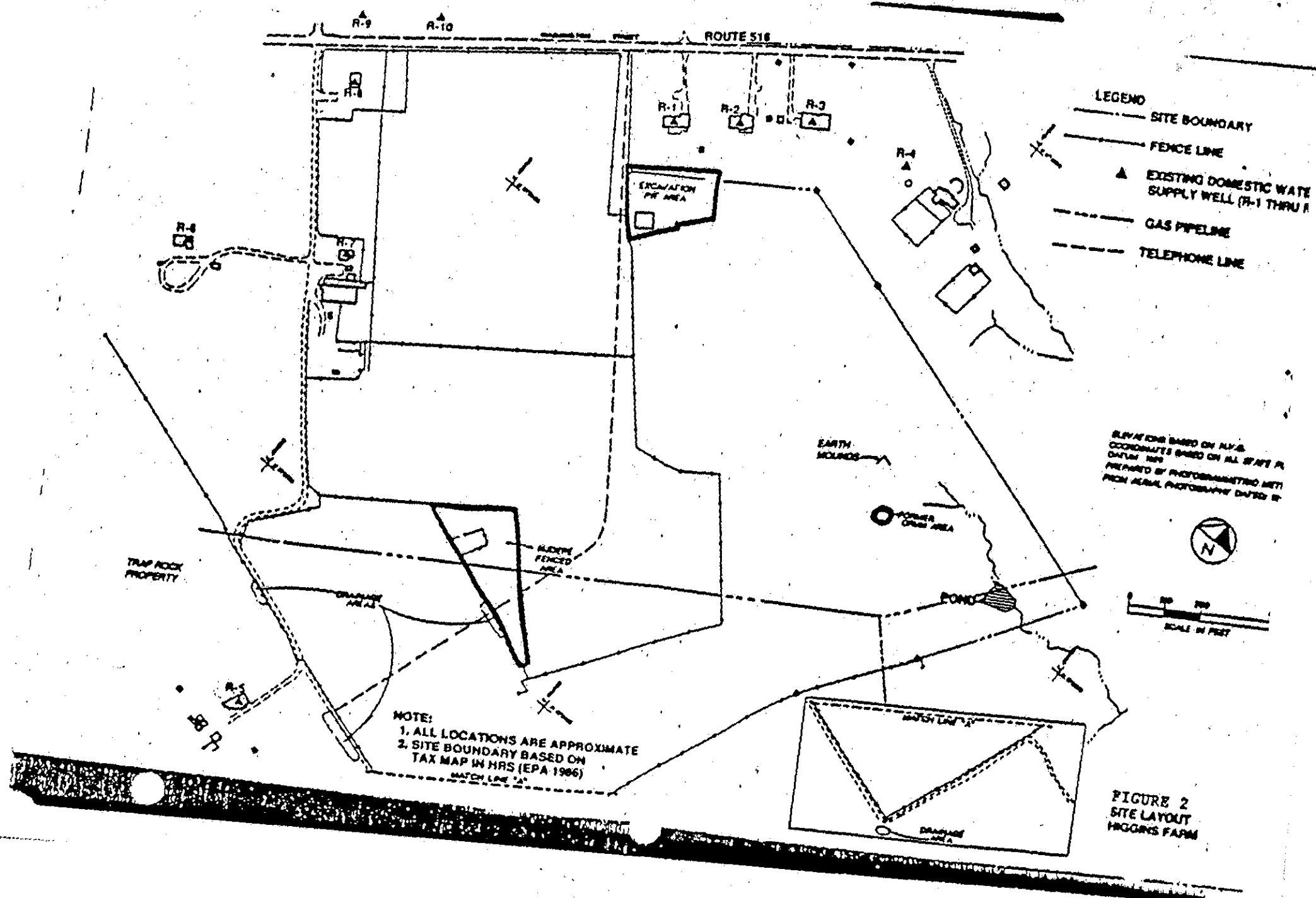
In accordance with the NCP, a formal public comment period is not required when issuing an ESD. However, since the community had expressed an interest in the 1997 ROD preferred remedy, EPA will announce the availability of this ESD and provide a public availability session.

Copies of the FFS, ESD and any other supporting documentation are available in the Administrative Record for this site maintained at the Mary Jacobs Memorial Library, Franklin Township Public Library and the U.S. Environmental Protection Agency (as described on Page 2).

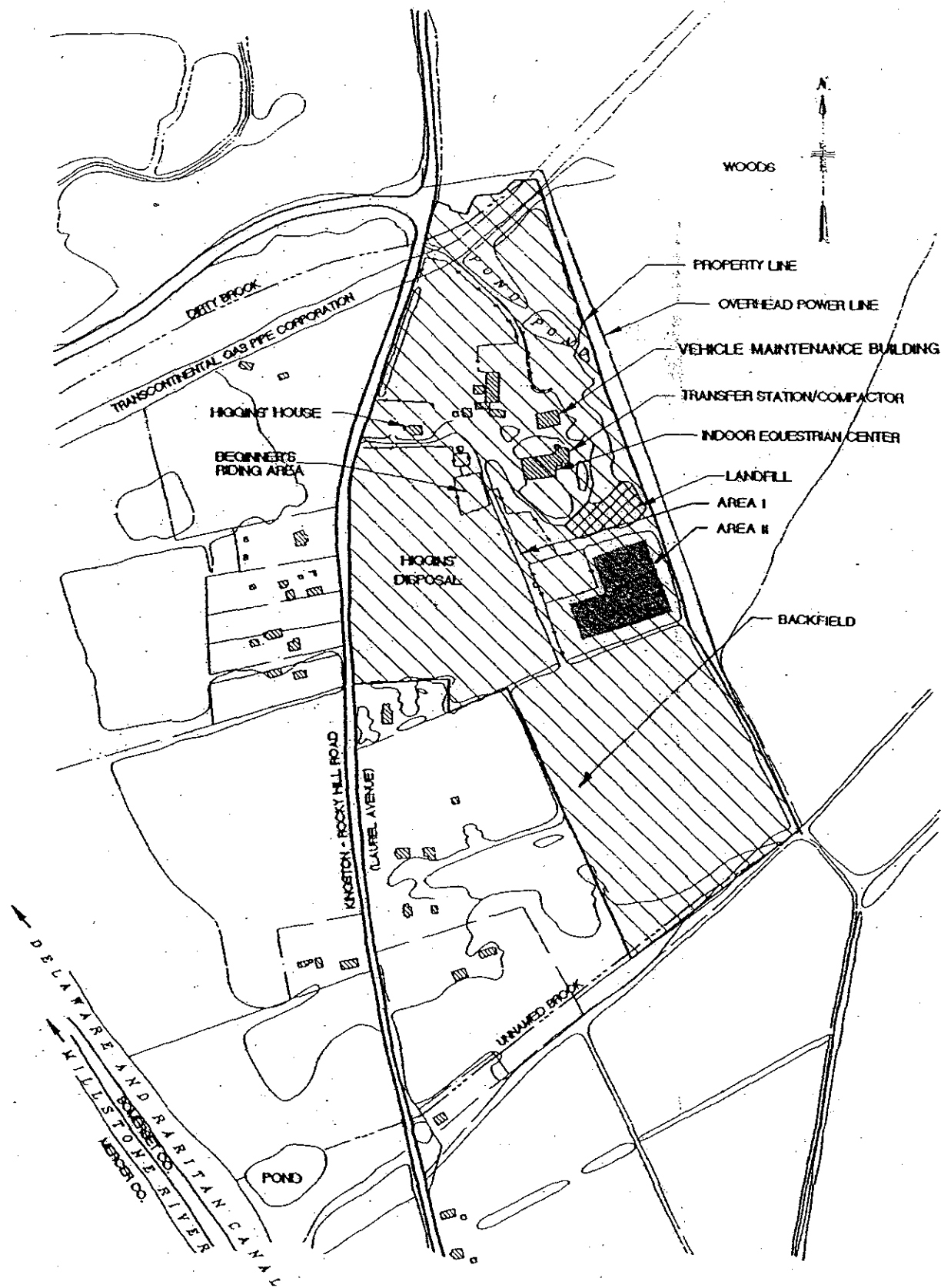
Jane M. Kenney  
Regional Administrator

12/9/02  
Date

# Exhibit B



# Exhibit C



SOURCE: AERIAL PHOTOGRAPH KAS86-01 24-3012 (MARCH 25, 1986)

400 0 200 400  
SCALE IN FEET

**MALCOLM  
PIRNIE**

HIGGINS DISPOSAL  
KINGSTON, NEW JERSEY  
HIGGINS DISPOSAL PLAN

**MALCOLM PIRNIE, INC.**

**FIGURE 1-3**